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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/627,902 07/27/00 KEARNEY

J 0014-003P/FS

QM02/0522  
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EXAMINER

HEPPERLE, S

ART UNIT

PAPER NUMBER

3753

DATE MAILED:

05/22/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/627,902

Applicant(s)

KEARNEY, JAMES F.

Examiner

Stephen M. Hepperle

Art Unit

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 6-13 is/are rejected.
- 7) ☒ Claim(s) 3-5 is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 18) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_.

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Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

An application in which the benefits of an earlier application are desired must be copending with the prior application or with an application similarly entitled to the benefit of the filing date of the prior application. In this case, the parent case referenced under 35 U.S.C. 120 (08/743,926) issued on 8 December 1998, which is a year and a half before the filing of this application. Therefore, the two cases were never copending.

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification (37 CFR 1.78).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 6-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Josephson (4,377,350) in view of Paredes. Josephson shows a vane assembly with a rocker bracket (Figs. 1 and 3) with wings 13, 14, each of which has a plain bearing 19, 20. Trunion pivot 21 fits within the bearings, with a linkage rod hole 24 between the two bearings. Paredes shows a ball bearing 66 between two relatively rotating components in a damper assembly. It would have been obvious in view of Paredes to replace any plain bearing in a damper valve

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assembly, including the trunion bearings of Josephson because of the known equivalence of plain and anti-friction bearings, and in particular to reduce friction and operating forces. Regarding claim 6, both Josephson and Paredes show a shaft passing through the bearing. The details of claims 7-9 are seen as a natural consequence of fitting ball bearings in place of plain bearings. Regarding claim 10, it would have been obvious to support the Josephson vanes on rods supported in bearings as shown by Paredes, to reduce friction in the overall assembly and reduce operating forces. Regarding claims 12-13, it would have been obvious to expand beyond the two vanes shown by Josephson to make a larger damper, and it would have been obvious to duplicate the control apparatus (rocker brackets, trunion pivots, and linkages).


Claims 3-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hagar shows a multiple vane damper with interconnected linkages and bearing support of the vanes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Hepperle whose telephone number is 703-308-1051. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Buiz can be reached on 703-308-0871. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7765 for regular communications and 703-308-7765 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.



Stephen M. Hepperle  
Primary Examiner  
Art Unit 3753

SMH

May 16, 2001